STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 18, 2003
v	No. 235127 Oakland Circuit Court
CHARLES DALE CAGE, Defendant-Appellant.	LC No. 99-165125-FH

Before: Griffin, P.J., and Neff and Gage, JJ.

PER CURIAM.

Defendant was convicted by a jury of possession with intent to deliver between 50 and 225 grams of a controlled substance (cocaine), second or subsequent offense, MCL 333.7401(2)(a)(iii), MCL 333.7413(2), and possession of marijuana, second offense, MCL 333.7403(2)(d), MCL 333.7413(2). He appeals as of right and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that his trial counsel rendered ineffective assistance in failing to move to suppress the narcotics as being the fruit of an unlawful arrest. The arrest was unlawful, defendant argues, because the bench warrant that was the basis for his arrest was of "questionable validity."

To prevail on a claim of ineffective assistance of counsel, a defendant must show that counsel's performance was objectively unreasonable, overcoming a strong presumption that the performance was sound trial strategy, and that, but for counsel's deficient performance, a reasonable probability existed that the outcome of the proceeding would have been different. *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Hoag*, 460 Mich 1, 5; 594 NW2d 57 (1999). In the context of a claim that counsel erred in failing to move to suppress otherwise reliable evidence under the fourth amendment, the United States Supreme Court has held that, in conjunction with the *Strickland* standard, "the defendant must also prove that his Fourth Amendment claim is meritorious and that there is a reasonable probability that the verdict would have been different absent the excludable evidence in order to demonstrate actual prejudice." *Kimmelman v Morrison*, 477 US 365, 375; 91 L Ed 2d 305; 106 S Ct 2574 (1986); *Williams v Taylor*, 529 US 362; 120 S Ct 1495; 146 L Ed 2d 389(2000).

Here, defendant's fourth amendment claim lacks merit; therefore, he has failed to demonstrate the requisite actual prejudice. Defendant vaguely challenges the bench warrant as

of questionable validity because the reason for issuance of the January 22, 1999, warrant—i.e., nonpayment of support—*may have* been resolved at a hearing on the matter on January 6, 1999. Defendant offers no persuasive factual support for this claim and, indeed, we find it nonsensical to expect that an officer on duty would have access to such information. Running a LEIN check of a vehicle driver is a routine and accepted practice by the police in this state. *People v Davis*, 250 Mich App 357; 649 NW2d 94 (2002) (citing cases). Quoting from *People v Walker*, 58 Mich App 519, 524; 228 NW2d 443 (1975), the *Davis* Court explained:

> A LEIN check is an unobtrusive investigative tool employed by the police to retrieve information regarding an individual's driving record and to determine whether there are any outstanding warrants for his arrest—all matters of public record. As such, a LEIN check does not involve an unlawful disregard for individual liberties. [*Davis, supra* at 367.]

Thus, in this case, the officer's LEIN check of defendant, yielding an outstanding bench warrant for his arrest, constituted legitimate and reasonable grounds for defendant's arrest.[1]

In summary, defendant's arrest was valid and, therefore, he was subject to a search of his person incident to arrest. The controlled substances seized from his person were not subject to suppression under the fourth amendment. Trial counsel was not ineffective in failing to move to suppress the evidence.

Affirmed.

/s/ Richard Allen Griffin
/s/ Janet T. Neff
/s/ Hilda R. Gage

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[1] Moreover, even in the absence of the outstanding bench warrant, the officers possessed reasonable suspicion that criminal activity was afoot to justify a brief, investigatory stop of defendant based on information from a confidential informant and independent verification through surveillance and investigation. *Terry v Ohio*, 392 US 1, 22; 88 S Ct 1868; 20 L Ed 2d 889 (1968); *People v Oliver*, 464 Mich 184, 192; 627 NW2d 297 (2001).